IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9719 of 2004

Between:

Sanda John @ Jhony s/o Somiaah R/o Vanamdasgadda, Khammam District

... PETITIONER

AND

1. Station House Officer, II Town Police Station, Kothagudem, Khamma

District.

2. The Superintendent, Rescue Home, Salimnagar Colony, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction declaring the proceeding of Additional Judicial I Class Magistrate, Kothagudem in Dis.No.938 dated 24.03.2004 in Cr.No.18/04 of P.S.II Town Kothgudem under Section 366 IPC and Sec.3 of Child Marriage Restraint Act, 1929) and also the order dated 28.05.2004 of the Additional Judicial I Class Magistrate Kothagudem in Crl.MP.No.3733/04 in Cr.No.18/04 on the file of the PS II Town Kothagudem as illegal, arbitrary, unreasonable & violative of fundamental rights guaranteed to the petitioner and Aparna wife of the petitioner and d/o Rajaiah r/o CRP Camp, Ramavaram, Kothagudem, Khammam and issue consequential direction to the respondents herein not to give effect to the said orders and further direct the respondents to set the said Aparna at liberty forthwith.

Counsel for the Petitioner: MR.M.RAJAMALLA REDDY

Counsel for the Respondents: GP FOR HOME

The Court made at the admission stage made the following order:

ORDER:

The petitioner seeks declaration that the proceedings of the Additional Judicial First Class Magistrate, Kothagudem, in Dis.No.938 dated 24.03.2004 as well as the order dated 28.05.2004 passed by the Additional Judicial First Class Magistrate, Kothagudem, in Crl.MP.No.3733 of 2004 in Cr.No.18 of 2004 on the file of the PS II Town, Kothagudem, as arbitrary and illegal.

The petitioner states that he is a permanent resident of Vanamdasgadda, Ramavaram, Kothagudem Town and one Kapu Aparna, who is also a permanent resident of the same locality and aged about 19 years, fell in love with him and they got married on 18.03.2004 at Panduranga Bhajana Mandir, Kothagudem. Their marriage was also registered with the Sub-Registrar, Kothagudem on 19.03.2004. However, the father of Aparna who was against the said marriage, lodged a complaint with the first respondent on 15.03.2004 alleging that Aparna was a minor. On the basis of the said complaint a case in Cr.No.18 of 2004 was registered by the II Town Police Station, Kothagudem, under Section 366 IPC and Section 3 of the Child Marriage Restraint Act, 1929, against the petitioner.

In pursuance thereof, the petitioner was arrested and remanded to judicial custody. Subsequently on 09.04.2004 he was enlarged on bail. On 22.03.2004 the said Aparna was produced before the learned Additional Judicial First Class Magistrate, Kothagudem, and her statement was recorded. She categorically stated that she is not a minor and she married the petitioner on 18.04.2004 out of her own free will. Thereafter by order dated 24-03-2004 the learned Judicial First Class Magistrate, Kothagudem sent her to Rescue Home, Salimnagar, Hyderabad for safe-custody since she was not willing to join her parents. Thereafter, the petitioner filed Crl.MP.No.3733 of 2004 before the learned Additional Judicial First Class Magistrate, Kothagudem, seeking release of Aparna from the Rescue Home and to hand over her custody to him, but the same was closed on 28.05.2004 observing that the Court cannot review its own order dated 24-03-2004. Hence, this writ petition challenging the order of the learned Additional Judicial First Class Magistrate, Kothagudem, dated 28.05.2004 and to set the said Aparna at liberty.

This Court by order dated 24-06-2004 directed the second respondent to produce the girl, Aparna. Accordingly, she was produced before this Court on 02.07.2004. Again the said girl as well as her parents and the petitioner appeared before this Court on 06.07.2004 and after hearing both sides this Court by order dated 07-07-2004 directed that the learned Additional Judicial First Class Magistrate, Kothagudem, shall refer the alleged minor girl to the competent medical authority for determination of her correct age. In pursuance thereof, the girl was sent to the Department of Forensic Medicine & Toxicology, Osmania Medical College/Osmania General Hospital, Hyderabad, for medical examination. Dr. C.R. Ram Reddy, Professor, Department of Forensic Medicine,Osmania Medical College, Osmania General Hospital, having examined the said girl Aparna, issued a certificate bearing A.D.No.362/FM/OSDGH/2004, dated 22.07.2004 stating that on the basis of General, Physical, Dental and Radiological Examination, he is of the opinion that the said girl is aged about 19 years. The said report is forwarded to this Court by the Additional Judicial First Class Magistrate, Kothagudem vide his letter dated 02-08-2004.

When this writ petition is taken up for consideration, the learned Counsel for the petitioner, on the basis of the medical report, submits that since it is no longer necessary to keep the girl in the Rescue Home and therefore she may be set at liberty forthwith. The said submission is not opposed by the respondents.

Having regard to the facts and circumstances of the case and in the light of the Medical Certificate dated 22-07-2004, whereunder it was opined that Aparna is aged 19 years, it is clear that she is not a minor, I deem it appropriate to dispose of the writ petition declaring that K.Aparna is set at liberty. Accordingly, the second respondent - The Superintendent, Rescue Home, Salimnagar, Hyderabad is directed to produce the girl K. Aparna, before the learned Additional Judicial First Class Magistrate, Kothagudem, on 23.08.2004, in which event the learned Additional Judicial First Class Magistrate, shall set her at liberty forthwith.

The writ petition is accordingly disposed of. No costs.

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(G. ROHINI, J)

August 18, 2004

Dsk/Gbs

Note: Furnish Copy by tomorrow

(B/o)

Dsk/Gbs

To

1. The Additional Judicial First Class Magistrate, Kothagudem

2. Station House Officer, II Town Police Station, Kothagudem, Khamma District.

3. The Superintendent, Rescue Home, Salimnagar Colony, Hyderabad.

4. Two CCs to GP For Home, High Court Buildings, Hyderabad.

5. Two CD Copies